



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

AUG 27 1998

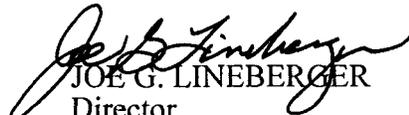
Office of the Assistant Secretary

AFBCMR 97-03606

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that the Field Grade Officer Performance Report, AF Form 707A, rendered for the period 19 March 1996 through 6 September 1996, be, and hereby is, declared void and removed from his records.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03606

AUG 27 1998

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

The Officer Performance Report (OPR) rendered for the period 19 March 1996 through 6 September 1996, be declared void and removed from his record.

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APPLICANT CONTENDS THAT

He has earned superior performance ratings and endorsements his entire career. Following the conclusion of a Social Actions investigation, of which he was cleared of any violation, the additional rater summarily ended his career and promotion potential with a totally unproven, unfounded personal opinion statement on the contested report. He has been approved for retirement effective 1 April 1998, and has nothing to gain from this request except to clear his record of totally inaccurate facts, and regain confidence in a system that has seemingly lost all concept of common sense.

In support of the appeal, applicant submits a statement from the rater on the contested report indicating that shortly after the contested report went forward, the additional rater called him into his office to discuss his endorsement. The additional rater asked him for details regarding a Social Actions investigation which involved the applicant. He informed the additional rater that a chief master sergeant had forwarded an offensive e-mail joke to several acquaintances including the applicant. Even though the Social Action's Officer had inappropriately determined applicant's guilt before the investigation, an exhaustive search of all the electronic records and interviews with numerous squadron members failed to produce a shred of evidence that applicant had even read the e-mail, much less that he had supported or fostered it. Having direct knowledge of applicant's professionalism and integrity, he accepted applicant's word that he did not recall reading the message and, therefore, must have deleted it along with other junk mail. After taking administrative action against the sender, he considered the case closed. After recounting the particulars with the additional rater, he (rater) stated that being an intended recipient of someone else's gross error in judgment does not disqualify an

oficer from command. The additional rater agreed in principle, but stated that the applicant "had to have read it" despite the lack of any supporting evidence and contrary to applicant's direct statement to him. The additional rater then changed the recommendation for command bullet to "Squadron command not recommended at this . . ."

The rater also states that the contested report reflects two fundamental wrongs. First, the additional rater's comments are based on reasoning which is contrary to fairness and justice. In effect, he took a closed investigation, reopened it, tried it, and concluded with a finding of "guilty" even though he never allowed the accused to present a defense. Second, such a statement on a field grade officer's OPR carries such a negative weight it effectively not only cuts off any chance for command but also eliminates the officer from any possibility for promotion. Such a statement must be referred to the ratee, and this one was not. Whether one agrees with the additional rater's verdict or not, the facts remain that the applicant was never afforded the opportunity to offer a rebuttal for consideration by his senior rater.

Applicant also submits a statement from [REDACTED] stating that as mere office humor, he forwarded an e-mail to numerous personnel. Taken out of context, someone was offended by the content of the document and a Social Action investigation began. At completion of the investigation he was reprimanded for his conduct and failure to follow good judgment in forwarding the e-mail. He honestly wishes that he could say his reprimand was the end of the story, but it is not. Based on the receipt of an e-mail that was never asked for, applicant has had to bear the burden of a [REDACTED] reduced endorsement that is based solely on his ([REDACTED] actions and the opinion of senior leaders. The hard facts are that his personal actions have had a negative effect on applicant's career. With the Logistics Group Commander's underscored endorsement based on appearance and perception rather than fact, he urgently requests that the contested OPR be removed from applicant's record.

In further support of his appeal, applicant submits copies of OPRs, copy of retirement orders, and redacted Social Actions Report.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant retired from extended active duty in the grade of major effective 1 April 1998.

Applicant was considered and nonselected by the CY97C Lieutenant Colonel Selection Board, as a below-the-zone candidate.

Applicant did not submit an appeal of the contested OPR under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. Since the applicant failed to provide support from all of the evaluators of the contested report, this application was not returned.

His OPRs rendered since 1993 reflect the following:

<u>PERIOD ENDING</u>	<u>EVALUATION OF POTENTIAL</u>
18 Mar 93	Meets Standards
18 Mar 94	Meets Standards
18 Mar 95	Meets Standards
18 Mar 96	Meets Standards
* 06 Sep 96	Meets Standards
01 Jun 97	Meets Standards

\* Contested report

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AIR FORCE EVALUATION:

The Chief, Appeals, and SSB Branch, AFPC/DPPP, reviewed this application and states that the rater states the additional rater had never met the applicant and, therefore, did not directly observe applicant's performance. The rater alleges the final statement in Section VII of the report was changed by the additional rater after a discussion concerning the social action's investigation, making the report a referral. They disagree. An OPR is not referred unless any comment in the report refers to behavior incompatible with standards of professional conduct, character, or integrity. The additional rater's comments did not make the report a referral. Nor was he obligated, under these circumstances, to obtain a statement from the applicant. However, there is one anomaly in the additional rater's section which is that the "concur" block was marked even though he specifically nonconcur with the rater's recommendation for a squadron commander position.

AFPC/DPPP further states that the applicant and his rater contend the additional rater changed the final statement in Section VII as a result of the social action's investigation. They consider this to be speculation on the part of both the applicant and his rater. They note, the additional rater did not specifically mention the reason he did not recommend the applicant for squadron command. Although the applicant and rater seem to think the statement was a direct result of the e-mail incident, they have no evidence this single event was the sole reason the additional rater nonrecommended the applicant for a squadron commander's job. Since the applicant failed to provide anything from the additional rater, they must assume he nonconcurred with removal of the OPR.

They note that the applicant provides a copy of a memorandum from social actions, but it does not state the findings of the case, nor does it specifically address the contested OPR. Therefore, they conclude it is irrelevant to this issue. The applicant has failed to prove error or injustice in regard to the contested report and recommend denial of the application.

A complete copy of the evaluation is attached at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 27 January 1998, a copy of the Air Force evaluation was forwarded to the applicant for review and response within 30 days. As of this date, no response has been received by this office.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing the evidence of record, we are persuaded that the contested report is not an accurate assessment of the applicant's performance during the period in question. In this respect, we note the statement submitted from the rater who indicates that he discussed the e-mail incident with the additional rater; that he told the additional rater that no evidence could be found that the applicant had read the e-mail; that the additional rater, despite the lack of evidence, stated that the applicant "had to have read it"; and, that the additional rater then changed the recommendation for command bullet to "Squadron command not recommended at this time." Based on this statement and in recognition of the applicant's prior and subsequent outstanding performance, we believe the contested report should be declared void and removed from his records.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Field Grade Officer Performance Report, AF Form 707A, rendered for the period 19 March 1996 through 6 September 1996, be declared void and removed from his records.

The following members of the Board considered this application in Executive Session on 28 July 1998, under the provisions of AFI 36-2603:

Mr. Michael P. Higgins, Panel Chair  
Mr. Allen Beckett, Member  
Dr. Gerald B. Kauvar, Member  
Ms. Gloria J. Williams, Examiner (without vote)

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 26 Nov 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPP, dated 7 Jan 98.
- Exhibit D. Letter, AFBCMR, dated 27 Jan 98.



MICHAEL P. HIGGINS  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

7 JAN 1998

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPP  
550 C Street West, Suite 8  
Randolph AFB TX 78150-4710

SUBJECT: [REDACTED]

& requested Action. Applicant requests voidance **from his** official records of the **officer** performance report (OPR) that closed out 6 Sep 96.

Basis for Request. The applicant contends **his** group commander (additional rater) downgraded his indorsement on the OPR as the result of a social actions investigation for which he was cleared. The applicant applied for voluntary retirement effective 1 Mar 98, which was approved.

Recommendation, Deny.

Facts and Comments.

a. Application is timely. Applicant did not submit **an** appeal of the contested OPR under AFI 36-2401, **Correcting** Officer and Enlisted Evaluation Reports, 3 Jun 94. We did not return the application because the applicant failed to provide support **from** all of the evaluators of the contested report.

b. The governing directive is AFI 36-2402, Officer Evaluation System, 1 Jul 96. The applicant **has** not yet been considered in-the-promotion zone for promotion to **the** grade of lieutenant colonel by the central major promotion board.

c. In support of **his** appeal, the applicant submits a personal brief, copies of his OPRs, copy of a statement of suspect/witness/complainant **from** social actions, and memorandums from social actions, the **Area** Defense Counsel (ADC), the rater of the contested report and someone outside the rating chain. The evidence submitted by the applicant **was** torn and in poor condition when received in **this** office.

d. Air Force policy **is** that **an** evaluation report is accurate **as** Mitten when it becomes a matter of record. It takes substantial evidence to the contrary to **have** a report **changed** or voided. To effectively challenge **an** OPR, it is important to **hear from** all the evaluators on the contested report--not only for support, but for clarification/explanation.

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e. The applicant provided a letter from the rater from the contested report who recommended voidance of the contested report, since a single statement could not be removed. We disagree. The applicant could have requested the statement be removed from the report, but would require additional rater's support. The applicant's rater further states the additional rater had never met the applicant, and therefore, did not directly observe his duty performance. He alleges the final statement in Section VII of the report **was** changed by the additional rater after a discussion concerning the social actions investigation, making the report a referral. Again, we do not agree. **An** OPR is not referred unless any comment in the OPR, or the attachments, refer to behavior incompatible with **standards** of personal or professional conduct, character, or integrity, such as omissions or misrepresentation of facts in official statements or documents, financial irresponsibility, mismanagement of personal or government affairs, unsatisfactory progress in the Weight Management Program or Fitness Improvement Training Program, confirmed incidents of discrimination or mistreatment, illegal use or possession of **drugs**, Absent Without Leave (AWOL), and conviction by court martial. We, therefore, determine the additional rater **was not** obligated to refer the report since his statement did not refer to behavior incompatible with **standards** of professional conduct, character, or integrity. Nor **was** he obligated, under these circumstances, **to** obtain a statement **from the** applicant. However, there is one anomaly in the additional rater's section which is that the "concur" block was marked even though he specifically nonconcur with the rater's recommendation for a squadron commander position.

f. The applicant and his rater contend the additional rater changed the **final** statement in Section VII as a result of the social actions investigation. We consider this to be speculation on **the** part of both the applicant and his rater. **We** note, the additional rater did not specifically mention the reason he did not recommend the applicant for squadron command in the contested OPR. Although the applicant and **his** rater seem to think **the** statement on the OPR was a direct result of the e-mail incident which spurred the social actions investigation, we have no evidence this single event **was** the sole reason he nonrecommended the applicant for a **squadron** commander's job. Since the applicant failed to provide anything from the additional rater, we must assume he nonconcurred with removal of the OPR.

g. The statement from outside the rating chain is not germane to this case. While the individual is entitled to his opinion of the applicant, we are provided no reason to believe he was in a better position to assess the applicant's duty performance during the contested rating period than those specifically charged with his evaluation. Especially since he, a chief master sergeant in the United States Air Force, by his own admission, exhibited extremely poor judgment when he forwarded distasteful e-mail in the first place. In the absence of information from the evaluators, official substantiation of **error** or injustice from the Inspector General (IG) or Social Actions is appropriate, but not provided in this case. We note the applicant provided a copy of a memorandum from social actions, but **it** does not state the findings of the case, nor does it specifically address the contested OPR. We, therefore, conclude it is irrelevant to this issue. The applicant has failed to prove error or injustice in regard to the contested report. We find the OPR to be accurate as written and do not support the applicant's request to remove it from his official records.

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Summary. Based on the evidence provided, our recommendation of denial is appropriate.

  
MARIANNE STERLING, Lt Col, USAF  
Chief, Appeals and SSB Branch  
Directorate of Personnel Program Mgt



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